

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2013 FEB 15 P 4:07

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

SAHR ETOAM BERNARD M'BAYO

Plaintiff,

v.

U.S. DEPARTMENT OF STATE AND  
DOES 1 THROUGH 10

Defendants.

Case No.

1:13 CV 222  
CMH/TRJ

COMPLAINT FOR A WRIT OF MANDAMUS TO COMPEL  
ADMINISTRATIVE ACTION BY THE U.S. DEPARTMENT OF STATE

Plaintiff Sahr Etoam Bernard M'Bayo (hereinafter "M'Bayo" or "Plaintiff"), by and through the undersigned counsel, hereby files the following Complaint for a Writ of Mandamus to Compel Administrative Action by the U.S. Department of State, and further states:

NATURE OF CASE

1. This action is brought for a writ of mandamus regarding Plaintiff's pending application for a U.S. passport document ("passport application") due to the Defendants' failure to adjudicate the application in violation of 22 Code of Federal Regulations §171. Plaintiff's passport application was filed on or about September 20, 2006, and has been pending for approximately 2,340 days. This action is brought to compel Defendants and those acting under them to take final action on the application.

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### PARTIES

2. Plaintiff Sahr, a citizen of the United States and a resident of Fairfax County, Virginia, and submitted his passport application to the U.S. Department of State on or about September 20, 2006.

3. Defendant United States Department of State (hereinafter "DOS" or "State Department") is a department of the Federal Government and generally charged with supervisory authority over all operations of U.S. foreign embassies and consulates, including the granting of visas and passports under 22 C.F.R. § 1, *et seq.* Does 1 through 10 are unknown DOS agents and/or employees which were tasked with adjudicating Plaintiff's passport application.

### JURISDICTION AND VENUE

4. This is an action for writ of mandamus and injunctive relief in accordance with the provisions of Title 28, U.S.C. §§ 2201 and 2202 and is brought for the purpose of determining a question of actual controversy between the parties as more fully explained in this Petition.

5. This Court has jurisdiction to hear this complaint and the claims stated herein by virtue of 28 U.S.C. §§ 1331, 1361, and 2201 because this is a federal mandamus action brought to compel Defendant and its agents and employees to perform their statutory duties owed to the Plaintiff. This Court has additional jurisdiction by virtue of the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, as Plaintiff seeks judicial review of the inaction of Defendant and its agents.

6. Venue is proper in the District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(e), in that one or more of the Defendants are located and/or transact business in this district and this is the district in which the Plaintiff resides and no real property is involved in this action.

### **EXHAUSTION OF REMEDIES**

7. The Plaintiff, through counsel, has repeatedly requested that the Defendants make a final decision on his pending passport application by way of producing and investigating relevant documents through a Freedom of Information Act (hereinafter "FOIA") Request. These requests were made telephonically and in writing.

8. Plaintiff obtained an inconclusive response to the FOIA request after judicial intervention and was as consequence, unable to procure his U.S. passport.

9. The Plaintiff has exhausted his administrative remedies, to no avail, and his only recourse is to file the instant case before this Court.

### **FACTS AND CAUSE OF ACTION**

10. Paragraphs 1 through 9 are hereby incorporated as through fully restated herein.

11. Plaintiff was born on January 29, 1966, at Sibley hospital in the District of Columbia to Eya and Beatrice M'Bayo. Plaintiff is a resident of Arlington, Virginia and is a devoted husband and father. His family members are citizens of the United States.

12. Plaintiff's father, Eya M'Bayo, a citizen and native of Ghana was in the employ of the Embassy of Ghana and allegedly present in the United States as a diplomat.

13. Plaintiff since his birth has resided in the United States as a native and a citizen of the United States. He has been registered to vote, applied for and received multiple U.S. passports for international travel, and contributed to governmental agencies such as federal and local taxation agencies, and the social security administration since the age of nineteen. Proof of the same is attached herein as **Exhibit A**.

14. On September 20, 2006, Plaintiff made a routine application to renew his U.S. passport for international travel. On October 25, 2006 the U.S. Department of State informed Plaintiff

that according to their records his was not a U.S. Citizen as his father maintained diplomatic status at the time of Plaintiff's birth. This correspondence is attached as **Exhibit B**.

15. Plaintiff through counsel, filed a Request for Information under the Freedom of Information Act, pursuant to 22 C.F.R. § 171, in an attempt to obtain pertinent documents and information relating to his claim for U.S. citizenship. This request was received by the U.S. Department of State on or about September 03, 2009. Defendant finally responded to the FOIA request after judicial intervention contending that documents establishing Plaintiff's claim cannot be located.

16. Plaintiff's biological mother Beatrice L. M'Bayo, a citizen of the United States, was present at the time of Plaintiff's birth, is witness to the fact that proper immigration documents were filed at the time of Plaintiff's infancy and/or childhood to ensure his status as a citizen of the United States.

17. Plaintiff's maternal uncle, Foday M. Turay, a citizen of the United States, was present at the time of Plaintiff's birth, is witness to the fact that proper immigration documents were filed at the time of Plaintiff's infancy and/or childhood to ensure his status as a citizen of the United States.

18. Plaintiff's passport application remains un-adjudicated for approximately days when such applications are routinely processed between 2-6 weeks **Exhibit C**.

19. In addition, Defendants have violated the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*, as they are unlawfully withholding action on the Plaintiff's passport application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

20. Defendants' delay in this case is arbitrary and in violation of Plaintiff's due process rights and not in accordance with the law. Defendants have willfully and unreasonably delayed and refused to adjudicate Plaintiff's passport application, thereby depriving Plaintiff of his ability to travel internationally as a U.S. citizen, if not clarifying his U.S. citizenship status.

21. As a result of Defendants' delay, Plaintiff has incurred significant costs and expenses including airline travel, hotel stays, long-distance telephone charges, and now significant attorney's fees; in effect, the lives of him and his family are on-hold due to Defendants' inaction.

**PRAYER FOR RELIEF**

WHEREFORE, Sahr respectfully prays:

- A. That the Court order Defendants to immediately adjudicate Plaintiff's application for a U.S. passport;
- B. In the alternative, that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order mandating a time certain to adjudicate Plaintiff's application for U.S. passport;
- 3. That the Court award reasonable attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504; and
- 4. That this Court grant such other and further relief as this Court deems proper under the circumstances.

Respectfully Submitted,





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